

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 31st May, 2016**

+ **W.P.(C) No.4881/2016 & CM No.20346/2016 (for stay)**

DELHI MEAT MERCHANT ASSOCIATION Petitioner

Through: Mr. S.P. Jha, Mr. Vikrant Bhardwaj
and Ms. Jyoti Sharma, Advs.

Versus

**EAST DELHI MUNICIPAL CORPORATION OF
DELHI & ORS**

..... Respondents

Through: Ms. Mini Pushkarna, Adv. for R-1.
Ms. Sakshi Popli, Adv. for SDMC.
Mr. Raman Dugga, Standing Counsel
for GNCTD with Ms. Aayushi Gupta,
Adv. for R-4&5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.20347/2016 and CM No.20401/2016 (both for exemption)

1. Allowed, subject to just exceptions.
2. The applications stand disposed of.

W.P.(C) No.4881/2016 & CM No.20346/2016 (for stay).

3. The petition impugns:

(A) the Office Order dated 1st January, 2016 of the respondent no.1
East Delhi Municipal Corporation of Delhi (EDMC) laying down the
“Revised Policy for grant of License to the Meat Shops” insofar as it
in paragraph 14 (xxviii) and in paragraph 16(xii) thereof provides as

under:-

“14. General terms & conditions

.....

xxviii. The meat shopkeeper would submit no objection certificate or consent letter of the Area Councillor at the time of submission of application for grant of new license to the meat shops.

16. Requirements of documents for grant of licence.

.....

xii. No objection Certificate or consent of area councillor shall be obtained for grant of new license of meat shops (buffalo, sheep, goat, poultry, fish and pork). ”

(B) the lack of uniform policy with respect to imposition of fine / penalty for illegal slaughtering of goat and sheep and the office order / decision taken by respondent No.3 South Delhi Municipal Corporation (SDMC) vide Resolution No.81 dated 26th August, 2015 to increase the fine with respect to illegal slaughtering of goat / sheep to @ Rs.2,000/- per carcass.

4. It is the case of the petitioner (i) that it is a registered society under the Societies Registration Act, 1860 and represents the interest and welfare of the meat merchants of State of Delhi who are dealing in meat trade in any form; (ii) that after the trifurcation of the Municipal Corporation of Delhi (MCD), the respective Mayor / In-Charge of each of the Corporation is in the habit of taking arbitrary decisions adversarial to the interest of the

members of the petitioner; (iii) that the petitioner has requested the respective Municipal Corporations to, before taking any decision, consult the petitioner but to no avail; (iv) that the condition introduced by the respondent No.1 EDMC vide its Office Order dated 1st January, 2016 supra to take a 'No Objection Certificate' (NOC) or consent letter of the Area Councillor along with its application for grant of licence is non-existent in the respondent No.2 North Delhi Municipal Corporation (NrDMC) and the respondent No.3 SDMC; (v) that in North and East Delhi, the fine for illegal slaughtering of goat / sheep is Rs.500/- per carcass but in South Delhi the said fine is Rs.2,000/- per carcass; (vi) that the respondent No.3 SDMC vide Resolution No.81 dated 26th August, 2015, without any basis and consultation with the petitioner, has increased the fine for illegal slaughtering of goat / sheep to Rs.2,000/- per carcass and which is four times the fine imposed in the jurisdiction of the other Municipal Corporations; (vii) that the Meat Shop Licence Policy as introduced by the respondent No.1 EDMC, to the extent it leaves the applicant for meat licence at the whims and fancy of the Area Councillor, is arbitrary and discriminatory; (viii) that there was no such condition in the Licence Policy issued on 2nd September, 2011 by MCD; (ix) that the requirement of obtaining NOC from

the Area Councillor has no nexus to the object of issuing the trade licence for running the meat shop; (x) that under the Delhi Municipal Corporation Act, 1957 (MCD Act), the jurisdiction empowered to grant the licence vests in the Municipal Corporation but the Office Order dated 1st January, 2016 of the respondent No.1 EDMC relegates the said power to the Area Councillor amounting to abdication of statutory duty and leaving the applicant for the licence at the whims and fancy of Area Councillor who belongs to a Political Party and whose decision of issuing NOC or not would be influenced by the political ideology; (xi) that the condition of obtaining the NOC from the Area Councillor has no nexus to the grant of licence; (xii) that there can be no discrimination between the applicants for meat trade licence located in different localities; (xiii) that the condition for obtaining NOC is unreasonable restriction on the fundamental right to carry on trade and business.

5. Though notice of the petition has not been issued as yet but the counsels for all the respondents appear on advance notice.

6. Being *prima facie* of the opinion that the requirement introduced by the respondent No.1 EDMC, of obtaining an NOC from the Area Councillor for applying for a meat trade licence, cannot be sustained and being of the

view that the adjudication on the said aspect does not require a counter affidavit and the petition can be disposed of at this stage only, I have put so to the counsels for the respondents.

7. The counsel for the respondent No.1 EDMC is carrying the file containing the reasons for introducing the said requirement and has therefrom stated (a) that complaints were invariably received from the residents with respect to the meat trade licence granted for any location; (b) that it was thus felt that the Area Councillor as the representative of the citizens is best suited to identify the location within his ward with respect where to meat trade licence can be granted and is expected to issue the NOC in accordance with the public sentiment and which would also eliminate the complaints being made by the residents; (c) that Section 415(2) of the MCD Act empowers the Commissioner to impose conditions for grant of licence; (d) it thus cannot be said that the respondent No.1 EDMC was not authorised in law to impose such a condition.

8. I have enquired from the counsel for the respondent No.1 EDMC, whether the file brought by her contains any guidelines issued to the Area Councillors for issuance of the NOC.

9. The counsel replies in the negative.

10. I have further enquired from the counsel for the respondent No.3 SDMC the basis on which the fine of Rs.2,000/- per carcass has been computed.

11. The counsel again fairly states that there are no rules as to the rate of fine.

12. I will first take up the challenge to the term in the Revised Policy for grant of licence to meat shops of the EDMC requiring the applicant for licence for a meat shop to submit NOC or consent letter of the Area councillor along with his application.

13. Chapter XX of the MCD Act is titled “Markets, Slaughter Houses, Trades and Occupations”. Section 415 (1) thereunder prohibits carrying on the trade of a butcher, fish-monger, poulterer or importer of flesh intended for human food or use of any place for the sale of flesh, fish or poultry intended for human food without or otherwise than in conformity with a licence from the Commissioner. Section 415(2) empowers the Commissioner to while granting such licence impose conditions as to supervision and inspection. Section 415(3) prescribes the validity of the said licence as the end of the year for which it is granted and Section 415(4) provides that if any place is used for the sale of flesh, fish or poultry in

contravention of the provisions of Section 415, the Commissioner may stop the use thereof by such means as he may consider necessary.

14. Thus the MCD Act empowers the Commissioner to grant licence for meat shops and to lay down conditions thereof.

15. However the Commissioner, EDMC is found to have in the Revised Policy framed by him made the exercise of power by him of grant of licence with respect to a meat shop conditional upon the Area Councillor giving a NOC or consent letter for grant of such licence. As per the said Revised Policy, if the Area Councillor refuses to give a NOC or a consent letter for establishing a meat shop in a premises with respect to which licence is desired, the Commissioner has been left powerless to grant such licence.

16. I have perused the MCD Act to see whether thereunder Area Councillor has been vested with any such power and do not find any such provision.

17. Vide Section 3 of the MCD Act the Corporation is a body corporate composed of Councillors to be chosen by direct election on the basis of adult suffrage from various wards into which the Corporation is divided. Qualifications prescribed to be chosen as a Councillor are only of having attained the age of 21 years and of having the name registered as an elector

in the electoral roll for a ward.

18. Chapter IV of the MCD Act titled “Municipal Authorities under each Corporation” in Section 44 thereunder provides for each Corporation to have a Standing Committee and a Wards Committee of which the Councillors are members. Section 49 of the Act provides that the Standing Committee shall exercise such powers and perform such functions as are specifically conferred or imposed upon it by or under the Act and Section 52 provides that Wards Committee shall exercise the powers and perform the functions as specified in the Fifteenth Schedule in relation to that Zone. Fifteenth Schedule to the Act does not concern grant of licence to meat shops.

19. On the contrary under Section 54, the Commissioner is to be appointed by the Central Government and vide Section 59 the entire executive power for the purpose of carrying out the provisions of the MCD Act or any other Act conferring any power or imposing any duty on a Corporation vests in the Commissioner.

20. There is no provision in the MCD Act requiring the Commissioner to Act on the aid and advice of the Councillor(s). The councillors constituting the Corporation can only require the Commissioner to report on the matters enumerated in Section 70 of the Act.

21. Section 415 aforesaid vests the power to grant licence for a meat shop in the Commissioner and not in the Standing Committee or in the Wards Committee. The Revised Policy of the EDMC vesting such power in the Area Councillor and/or making the exercise of such power by the Commissioner dependent upon the NOC or the consent letter issued by the Area Councillor is thus clearly contrary to the provisions of the Act.

22. Though Section 491 of the Act empowers the Commissioner to delegate any power conferred or any duty imposed on him under the Act but only to a municipal officer or a municipal employee and not to a Municipal Councillor or an Area Councillor.

23. A Three Judges Bench of the Supreme Court in *State of Gujarat Vs. Krishna Cinema* (1970) 2 SCC 744 was concerned with the Bombay Cinemas (Regulation) Act, 1953, though constituting the District Magistrate as the Licensing Authority for grant of a cinematograph licence but requiring an applicant therefor to submit a 'No Objection Certificate' from the State Government. It was held that the same amounted to making the power of the Licensing Authority subject to the overriding control of the State Government and it was observed that it was difficult to appreciate what purpose was served by providing for an appeal against the order of the

Licensing Authority to the State Government. It was further held that though the power to issue, revoke or suspend a licence conferred on the District Magistrate was exercisable on satisfaction of the District Magistrate of certain objective conditions being met and was quasi-judicial but exercise of power by the District Magistrate as Licensing Authority to grant a licence was still made subject to the State Government and the propriety and validity of making exercise of quasi-judicial power subject to the control at the stage when it is exercised, of the executive, was questioned. It was further observed that the vesting of the power of the Licensing Authority in the District Magistrate was inconsistent with the rule, making the same conditional on submission of the NOC. It was yet further held that power to grant a licence is quasi-judicial and by use of the expression ‘absolute discretion’, it was not intended to invest the Licensing Authority with arbitrary power so as to destroy the limitations to which it is subject by its inherent nature and the Act did not purport to confer arbitrary authority upon the Licensing Authority—the power to control the Licensing Authority is not the power to supplant the Licensing Authority.

24. In my opinion, what has been observed / held by the Supreme Court applies in all force to the present situation also. Here, the position is rather

worse. The power vested by the statute i.e. MCD Act in the Commissioner has been made by the Commissioner subject to the control of the Municipal / Area Councillor and which cannot be countenanced in law.

25. Not only so, there are no guidelines prescribed for the Municipal / Area Councillors to grant or refuse licence. In the absence of any guidelines, the same amounts to, on the one hand, the Commissioner, EDMC abdicating his power to grant licence to meat shop and on the other hand amounts to vesting unregulated power in the Municipal / Area Councillor to, at his whims and fancy, decide to whom to issue the NOC and to whom to refuse the NOC, amounting to, to whom to grant licence and to whom to refuse licence.

26. It is not as if the condition requiring NOC is always bad. I am reminded of the National Council for Teacher Education (Application for Recognition, the Manner for Submission, Determination of Conditions for Recognition of Institutions and Permission to Start New Course or Training) Regulations, 1995 also providing for an application for recognition to be accompanied by NOC from the State or Union Territory concerned and which was subject matter of challenge in *St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education*

(2003) 3 SCC 321. It was held that the power conferred on the State or Union Territory to grant NOC was not arbitrary or unchannelled, as guidelines for issuance of NOC existed and which guidelines had a direct nexus with the object of the National Council for Teacher Education Act, 1993. It was also held that the said requirement did not have the effect of giving the power of grant of recognition to the State Government or Union Territory, inasmuch as the grant or refusal of NOC by the State Government or Union Territory was not conclusive or binding and was made subject to the decision of the Regional Committee. It was also noticed that the role of the Government was to supply the requisite data for formation of opinion by the Regional Committee. However, there are no such parameters in the present situation. Here, paragraph 14 (xxviii) and in paragraph 16(xii) of the Revised Policy for Grant of Licence to the Meat Shops making an application for grant of license incomplete, without the NOC / consent letter of the Municipal / Area Councillor.

27. The reason(s) expounded by the counsel for EDMC for providing so and as recorded above also do not justify the requirement for NOC from the Area Councillor. It cannot be forgotten that the Area Councillor though the elected representative of the ward and even if elected by a wafer thin margin

and post election required to ignore as to who all supported him and who all opposed his / her election and to act in the interest of all, is rarely able to act so. This may result in the decision to grant or refuse licence having a political hue rather than administrative, as is statutorily required. The Area Councillor thus cannot be said to be best suited to identify the location for grant of licence. Also, Section 415(2) though empowers the Commissioner to impose conditions but only as to supervision and inspection. In exercise of power thereunder a condition abdicating the power to be exercised cannot be imposed.

28. Mention may also be made of *PVR Limited Vs. State of Karnataka* (2015) 13 SCC 140 concerned with Karnataka Cinemas (Regulation) Act, 1964. Section 12 thereof empowered the State Government to issue direction to any licensee or to licensees generally requiring the licensees to exhibit such film or class of films having scientific or educational value or dealing with news or current events or documentary films having special value to the public, as may have been approved by the State Government. The procedure for the State Government to approve such films was also laid down in the Rules. The State Government, without following the procedure prescribed for approval, required the licensees to exhibit films approved by

the Films Division. It was held that the State Government without approval in accordance with the procedure prescribed in the Rules could not direct the licensees to exhibit the films approved by the Films Division.

29. The ratio of the aforesaid judgment applies to the present situation also. The Commissioner, EDMC instead of himself / herself adjudging the suitability of the premises for grant of meat trade licence, has left the said question to be decided by the Municipal / Area Councillor.

30. Paragraphs 14 (xxviii) and 16(xii) of the Revised Policy for Grant of License to the Meat Shops of the respondent No.1 EDMC thus cannot be sustained and are struck down.

31. As far as the challenge on the ground of lack of the uniform policy with respect to the imposition of fine / penalty for illegal slaughtering is concerned, no merit is found therein.

32. Supreme Court as far back as in *Municipal Board of Abu Road Vs. Jaishiv* 1987 (Supp.) SCC 301 held that people residing within each municipal area can be classified as one group different from those residing in any other municipality and the plea of discrimination on the basis of rates prevalent in another municipality cannot be entertained. Recently also in *Yogendra Kumar Jaiswal Vs. State of Bihar* (2016) 1 SCC 183 it has been

held that the question of bringing in the concept of equality qua persons who function in other States is an unacceptable proponent and it is impossible to accept the same.

33. Similarly, no merit is found in the contention of the counsel for the petitioner that no consultations were held with the petitioner and / or no hearing given to the petitioner before fixing the rates of penalties. A Division Bench of this Court in ***Gulab Rai Vs. Municipal Corporation of Delhi*** 1990 (42) DLT 121, relying upon ***Sunderdas Kanhaiyalal Bhatija Vs. Collector, Thane, Maharashtra*** (1989) 3 SCC 396 held that in the absence of express statutory provision for compliance with principles of natural justice, those principles are not attached to a decision taken by the legislative process and that while exercising such powers the Government is not subject to the rules of natural justice. It was further held that as rates are fixed and the charges are levied and varied by the Corporation under the provisions of the MCD Act, the principles of natural justice are not incorporated as in fixing thereof the Corporation exercises its statutory powers.

34. The petition is therefore partly allowed. The challenge to paragraphs 14 (xxviii) and 16(xii) of the Revised Policy of the respondent No.1 EDMC for grant of licence to the meat shops is succeeds and the said paragraphs are

struck down / quashed. However, as far as the other reliefs claimed in the petition are concerned, the petition is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

MAY 31, 2016
'pp/bs'..

(corrected and released on 27th August, 2016.